UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

January 11, 2024

Ms. Lisa Allen
Superintendent
Sacramento Unified School District
5735 47th Avenue
Sacramento, California 95824

By email only to: superintendent@scusd.edu

Re: Sacramento City Unified School District, OCR Case Number 09-22-1344

Dear Superintendent Allen:

The U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on behalf of the Student against Sacramento City Unified School District (the District) on April 1, 2022. The identity of the Student and his father were previous disclosed to the District and are being withheld here to protect their privacy. The Student identifies as male and uses a male name and pronouns. The complaint alleged that the Student was discriminated against on the basis of sex when a teacher (the Teacher) at [redacted content] School (the School) refused to use the Student's preferred pronouns at least a couple times while discussing the Student's [redacted content] during [redacted content] on [redacted content], and did not allow enough time for the Student to join the boys' group during a class activity that [redacted content]. The complaint also alleged that the Vice Principal referred to the Student by the incorrect pronoun one time regarding [redacted content] on [redacted content]. The Student's father (the Complainant) reported these two allegations to the District.

OCR enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the District is subject to Title IX.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Complainant and the District. After careful review of the information gathered in the investigation, OCR determined that the District responded promptly to actual notice of the Complainant's allegations against the Teacher and the Vice Principal, including promptly directing the Teacher to use the Student's preferred pronouns and offered the Student supportive measures. After careful review, OCR determined that the District did not fulfill its obligation under 34 C.F.R. § 106.44(a) to have its Title IX Coordinator explain the formal complaint process to the Complainant once the District had actual knowledge of alleged

conduct that could meet the Title IX regulation's definition of sexual harassment. OCR also determined that there was insufficient evidence that the District's responses to the Complainant's allegation against the Vice Principal failed to comply with the requirements of Title IX. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

Legal Standards

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: "Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives federal financial assistance." Sex-based harassment is a form of sex discrimination under Title IX and includes sexual harassment. The regulation at 34 C.F.R. §106.30(a) defines "sexual harassment," in relevant part, as "conduct on the basis of sex" that includes "(2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity." This definition of sexual harassment may include nonsexual harassment based on sex or sex stereotyping if a reasonable person would determine that the harassment is so severe, pervasive, and objectively offensive that it denies a person equal educational access. *See* 85 Fed. Reg. 30179.

The Title IX regulation at 34 C.F.R. § 106.44(a) requires a recipient to respond promptly to actual knowledge of sexual harassment in the recipient's education program or activity against a person in the United States in a manner that is not deliberately indifferent. In the elementary and secondary school context, the regulations define "actual knowledge" as notice of sexual harassment or allegations of sexual harassment to the Title IX coordinator or any employee of an elementary or secondary school. 34 C.F.R. § 106.30(a). The regulations state that a recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. 34 C.F.R. § 106.44(a).

Once a recipient has actual knowledge of sexual harassment or allegations of conduct that could constitute sexual harassment in its education program or activity, the recipient must offer "supportive measures" to the "complainant." 34 C.F.R. § 106.44(a). The regulation defines "complainant" as "an individual who is alleged to be the victim of conduct that could constitute sexual harassment." 34 C.F.R. § 106.30(a). The regulation defines "supportive measures" as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. *Id.* Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. *Id.* Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. *Id.*

When the Title IX coordinator, an employee of an elementary or secondary school, or any recipient official with authority to institute corrective measures on behalf of the recipient has actual notice of sexual harassment or allegations thereof, the Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. *See* 34 C.F.R. §106.44(a). The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. 34 C.F.R. §106.30(a)

The Title IX regulation also establish procedural requirements, including a requirement that recipients designate at least one employee to coordinate the recipient's efforts to comply with Title IX, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or any actions that Title IX would prohibit, 34 C.F.R. 106.8(a). In addition, the Title IX regulation requires recipients to publish a notice of nondiscrimination covering Title IX, and to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. *See* 34 C.F.R. § 106.9(a); *see also* 34 C.F.R. § 106.8(b).

Factual Findings

At the time of the allegations, the Student was in [redacted content] grade at the School. The Student is a [redacted content] who uses he/him pronouns and has a preferred name. On [redacted content], the Student's father (the Complainant) notified the School secretary of the Student's preferred name and pronouns. The secretary responded that she would notify the Student's teachers of his preferred name and pronouns. In [redacted content], the Complainant emailed the Principal to discuss the Student's [redacted content], and to request that the Student be placed with a specific counselor (the Counselor). The Principal responded to the Complainant's concerns and confirmed that she would ensure the Student's assignment to the requested Counselor.

On [redacted content], the Complainant sent the Principal an email alleging that on [redacted content], the Teacher refused to use the Student's preferred pronouns during a conversation related to [redacted content]. The email explained that after the Teacher used "she" pronouns to refer to the Student at least a couple of times, the Student informed the Teacher that he used "he" pronouns, and the Teacher responded that it was against her beliefs to refer to the Student as "he" and that she had a First Amendment right to use "she" pronouns with the Student. The Principal responded the same day to the Complainant's email and stated that she would look into the issue and would address it with the Teacher. The Principal further stated that the Student has a right to feel safe at school, and that they supported the gender identity and expression of their students. In an interview with OCR, the Principal stated that she was unable to speak with the Student the day she received the report as he was absent that day ([redacted content]).

The School was closed on [redacted content]. On [redacted content], the Principal met with the Teacher. In an interview with OCR, the Principal stated that during the meeting they discussed that [redacted content] students have a right to be called their preferred names and pronouns and

Board Policy 5145.42 (Policy), which requires addressing transgender and gender non-conforming students by the name(s) and gender pronouns that correspond to their gender identity.

The Principal met with the Student later that same day ([redacted content]) to discuss the incident and his comfort in the class. During the meeting the Principal offered to switch the Student's class. The Principal stated to OCR that the Student was not sure if he wanted to switch classes and wanted to think about it [redacted content]. Following the meeting, the Principal emailed the Teacher later that day and thanked her for meeting. The Principal's email attached the Policy and notified the Teacher that she had spoken with the Student about switching classes, and that she would follow-up with him about his decision on [redacted content].

On [redacted content], the Teacher responded via email and wrote that the Policy does not negate trying to find a better teacher-to-student relationship. She stated that she was not capable of meeting the Student's needs and that, as her supervisor, the Principal had an obligation to address the concern, and not "for[ce] a situation that may result in more unnecessary trauma […]." The Teacher used the Student's preferred name in the email.

On [redacted content], the Principal responded to the Teacher by email stating that she understood that it was a tough situation regarding the Teacher's personal beliefs and the requirements of the Policy. The Principal stated that she was uncomfortable moving a student from her class based on a teacher request because of a preferred name and pronoun issue, as such a move could be viewed as discrimination. The Principal stated that if using the Student's preferred pronoun would result in trauma for the Teacher, the Principal would need additional guidance. The Principal noted that she had followed up with the Student about switching classes because she had received a complaint, but that she would be uncomfortable "forcing a change due to the only area [of concern] is due to a preferred pronoun." On [redacted content], the Teacher responded via email and stated that a student who has filed a complaint remaining in her class was already cause for concern.

On [redacted content], the Complainant emailed the Principal. He stated that after reviewing the District's own policies he was surprised that the Student did not get an apology from the Teacher. The Complainant stated that he believed that the Student's legal rights under District policies, state laws, and federal laws were being violated, and that the incidents were having a psychological effect on the Student. The Complainant wrote that the Student was not sure that he wanted to change classes, and that he liked his classmates in the class. The Complainant further wrote that during a class activity on [redacted content] after the initial incident (on [redacted content]) the Teacher [redacted content] and the Teacher did not allow enough time for the Student to join the boys group during the activity before [redacted content]. The Complainant stated that another student in the class pointed out that there was one more boy (the Student) going to the boys' group, and that the Teacher still did not recognize him as a boy.

The Principal responded to the Complainant the same day ([redacted content]). She wrote that she had spoken with the Teacher directly on [redacted content], regarding addressing the student as male, but that the Student had not been present in class since her conversation with the Teacher. The Principal stated that the Student's gender identity was something that everyone

needed to respect, and that everyone needed to refer to the Student by his preferred pronouns. She noted that while she could not force an apology, she would continue to work with the Teacher to ensure compliance with all the District policies. On [redacted content], the Complainant responded and reiterated that the Student had been in class when the incident occurred where the Teacher did not include the Student in the boys' group during a class activity. The Principal responded the same day, stating that she had made the District aware of the incident, and they were working on making sure that it was fully addressed. She noted that because the complaint involved a personnel matter, she was unable to provide specific details, but noted that the District was taking it very seriously. The Principal also requested clarification about the exact day that the incident occurred based on the Student's absences. She also stated that if it would be helpful, she would do a home visit with the Counselor to talk with the Student. The Complainant did not respond to the offer of a home visit or with the date of the incident when the Teacher did not place the Student in the boys' group.

Later that day the Principal forwarded her email correspondence with the Complainant to the Instructional Assistant Superintendent. She noted in the email that she had sent the Teacher a meeting request with a Human Resources (HR) employee present. She also stated that because she did not know about the [redacted content] where students were [redacted content] at the time that she met with the Teacher, and the Student did not raise it during their meeting, she did not address that specific incident in her meeting with the Teacher. The Instructional Assistant Superintendent responded that he agreed that a conversation at the District level was the correct next step.

In an interview with OCR, the Complainant stated that the Student made the decision to remain in the same class because he wanted to stay with his friends. The Complainant also informed OCR that following the meeting with the Teacher on [redacted content], the Teacher referred to the Student by his preferred name. The Complainant informed OCR that there were no other incidents of the Student being misgendered. In a response to OCR, the District stated that because there were no reports of additional incidents, and because the Teacher used the Complainant's preferred name, they did not hold the meeting with the Assistant Instructional Superintendent.

School records do not reflect any incidents of District staff misusing the Student's pronouns following [redacted content] until the end of [redacted content], and the Complainant has alleged none to OCR. On [redacted content], after the Student had been absent for [redacted content], the Counselor emailed the Complainant to check in. She asked how the Student was doing and wrote that they missed seeing the Student at school. On [redacted content], the Complainant responded that he was having issues with his email, and that he was just now seeing the Counselor's email. He noted that he was receiving alerts that the Student was absent from the School. The Complainant stated that the Student had [redacted content] prior, and that he had notified the School secretary about what had happened and why the Student had not been able to attend School. The Counselor emailed back the next day saying that she was sorry to hear about the Student's [redacted content]. She wrote that any days that the Student could attend that week would be great, as this was [redacted content]. She requested that the Complainant let the Student know that he had been missed. The Complainant wrote back the same day thanking her for her encouragement.

On [redacted content], the Complainant emailed the Counselor. He wrote that the Student had reported to him that the Counselor and the Vice Principal instructed the Student to go to the [redacted content] to complete [redacted content] on [redacted content]. The Complainant's email indicated that the Student had not been attending [redacted content] due to his gender identity, and that the Vice Principal addressed the Student as female in their conversation. The Complainant wrote that he wished that he had read more about [redacted content] and known that the School required the Student to be at [redacted content]. He additionally stated that the combination of the Student being required to be at [redacted content] and having the wrong pronouns used was too much for the Student. He inquired if there was anything that they could do to ensure that the Student would be able to [redacted content].

The Counselor responded the same day to the Complainant. She wrote that she was not sure that the information from the Student was accurate. The Counselor stated in the email that the School did not conduct [redacted content] in the [redacted content] or during [redacted content] but instead conducted it in the [redacted content] the [redacted content], the [redacted content] the [redacted content], and the [redacted content] during the [redacted content]. She noted that the students who need to complete a [redacted content] were pulled from their [redacted content] or [redacted content] and [redacted content] in [redacted content]. She stated that being pulled for a [redacted content] required being issued a pass from a counselor. The Counselor wrote that she never issued a pass for the Student because she knew that he had not been attending school. She noted that she did not have any interactions with the Student, and that she had reached out to the Vice Principal, who also stated that he did not have any interactions with the Student that day. The same day the Counselor forwarded the Complainant's email and her response to the Principal. In an interview with OCR, the Counselor stated that she never heard back from the Complainant after the email. [redacted content].

On [redacted content] the Vice Principal emailed the Principal. He stated that the purpose of the email was to address the allegation that he had misgendered the Student on [redacted content]. The Vice Principal stated that he did not recall having any interactions with the Student that [redacted content], and that he checked with both counselors to determine if they had any recollection of him interacting with the Student that day. The counselors responded that they did not see him interact with the Student or that they were not in his presence when he did interact with the Student. The Principal informed OCR that because they could not determine that the incident had occurred, no further actions were taken. In interviews with OCR, both the Principal and Counselor stated that they never heard back from the Complainant following his email of [redacted content]. The Student [redacted content].

Analysis

OCR found that the District had notice that the Teacher had refused to use the Student's preferred pronouns during their discussion about [redacted content] at the School. Specifically, on [redacted content], the Complainant emailed the Principal to inform her that the Teacher had misused the Student's pronouns at least a few times in their discussion about [redacted content] on [redacted content]. On [redacted content], the Complainant again emailed the Principal to inform her that the Teacher had not recognized the Student as a boy during a class exercise [redacted content]. The complaint to OCR clarified that the Teacher allegedly did not allow

enough time for the Student to join the boys' group before the Teacher [redacted content] and that another student noticed this and stated that there is one more boy. Both of these emails notified the District that the employee's conduct was based upon the Student's sex, including his nonconformance with sex stereotypes.

OCR next reviewed if the District failed to respond in a manner that complies with the Title IX requirements at 34 C.F.R. 106.44(a) to respond promptly to actual knowledge of allegations of sexual harassment, to offer supportive measures to a complainant, and to explain how to file a formal complaint of sexual harassment under Title IX. OCR found that the District promptly responded to the Complainant's two emails in [redacted content]. In response to the Complainant's email on [redacted content], that the Teacher had misused the Student's pronouns at least a few times in their discussion about [redacted content] on [redacted content], the Principal immediately scheduled a meeting with the Teacher and the Student. The Principal informed the Teacher of the Policy requiring staff to use all students' preferred pronouns and names in class. Following the meeting, the Principal followed up with the Teacher via email and elevated the matter to a District administrator. On [redacted content], the Complainant informed the Principal of an additional incident where the Teacher allegedly did not allow the Student enough time to join the boys' group [redacted content]. The Principal promptly asked the Complainant to clarify the date of this incident due to the Student's absences from school, but the Complainant did not reply or otherwise identify the date. The Principal determined that the alleged incident had to have occurred before her discussion with the Teacher about referring to the Student by his preferred name and pronouns on [redacted content].

OCR found that the Principal offered the Student supportive measures following the two alleged instances of the teacher misgendering the Student. The Principal offered to switch the Student to another class, which he declined, and offered a home visit to the Student with the Counselor, to which the Complainant did not respond. OCR also found that the Principal's responses to the Complainant's emails in [redacted content] were effective at stopping the Teacher's misgendering of the Student. Following the Principal's meeting and communications with the Teacher, both the Principal and the Complainant informed OCR that there were no additional instances of the Teacher misgendering the Student, and that the Student was referred to by his preferred name.

OCR determined that the District did not fulfill its obligation under 34 C.F.R. § 106.44(a) because once the District had actual knowledge of conduct that could meet the definition of sexual harassment, its Title IX coordinator did not explain the formal complaint process to the Complainant.

OCR next considered the District's response to the Complainant's report on [redacted content]. After the Counselor received an email from the Complainant alleging that she was present when the Vice Principal misgendered the Student and had required that the Student attend [redacted content], the Counselor immediately responded to the Complainant detailing her version of the events. She noted that she did not believe that the Student's allegations were accurate, writing that she did not send a pass for the Student to [redacted content], and that the [redacted content] did not occur during [redacted content]. The Counselor forwarded the email to the Principal, who reached out to the Vice Principal for his statement. The Vice Principal stated that he did not recall having any interactions with the Student that day. The Complainant never responded to the

Counselor's email representing that the allegations against her and the Vice Principal were not accurate.

The facts indicate that upon receiving notice of the alleged incident of the Vice Principal misusing the Student's pronoun one time regarding the [redacted content], the Counselor provided a prompt response to the Complainant and forwarded a response to the Principal, who requested additional information from the Vice Principal. On [redacted content], the Vice Principal confirmed in an email to the Principal that he had no recollection of interacting with the Student or misusing their pronouns, and nor did the counselors recall such an interaction. The Principal informed OCR that she was unable to determine if the alleged incidents occurred. Following the report, the Student [redacted content], and the Complainant did not communicate with the Principal or the Counselor. OCR has determined that the District promptly responded to the Complainant's report about the[redacted content] by looking into what had occurred and received information from the Counselor that [redacted content] did not occur in the [redacted content] as alleged and that the Vice Principal had not misused the Student's pronoun or even interacted with the Student on the day in question. When the District informed the Complainant that the Student's allegations were not accurate and asked for clarification, the Complainant did not reply. Based on the evidence obtained in this investigation, the District did not have actual notice of conduct by the Vice Principal that could meet the definition of sexual harassment because the alleged conduct could not have occurred: the Student was not at school on the date the Complainant alleged the conduct had occurred. For these reasons, OCR found insufficient evidence that the District's responses to the Complainant's report on [redacted content], failed to comply with the requirements of Title IX.

Conclusion

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently. When fully implemented, the resolution agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until the District is in compliance with the terms of the resolution agreement and the statutes and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a

law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions regarding this letter, please contact Dana Isaac Quinn at dana.isaacquinn@ed.gov or at (415) 486-5596**.**

Sincerely,

/s/

Sara Berman
Team Leader

cc: Sloan Simmons, counsel for the District, ssimmons@lozanosmith.com